

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
June 21, 2012

Members Present

Allan Virr, Chairman
Albert Dimmock, Vice Chairman
Ernest Osborn, Secretary
Donald Burgess

Members Absent

Lynn Perkins

Alternates Present

Louis Serrecchia
Joseph Carnvale
Frank Mazzuchelli @ 7:21pm
David Thompson

Alternates Absent

Teresa Hampton

Mr. Virr called the meeting to order at 7:00 p.m. with the salute to the flag, and notice of fire and handicap exits and that this and all Zoning Board meetings are videotaped.

It was noted for the record that Mr. Carnvale would sit for the following case.

12-111 Kristen Medina

Applicant is requesting a Special Exception per Article VI, Section 165-46B of the Derry Zoning Ordinance to allow the operation of a family day care at the residence 10 Windham Road, Parcel ID 25022, Zoned MDR.

Kristen & Geoff Medina, owners were present. Mr. Medina read the application for the Board.

Board Questions

Mr. Virr said that there were some issues with the initial diagram submitted as the Board was unable to determine the square footage of area within the home that the daycare would be utilizing. Mrs. Medina said that she had drawn out the floor plan and designated an area which she showed the Board a large poster board.

Mr. Virr asked if she had made copies for each of the Board members. Mrs. Medina said that she only had the poster board and was not aware that she needed separate plans for the Board.

The Board took a brief recess at 7:13pm in order to have copies of the large poster board made. It was also discovered that additional copies of the deed needed to be made also.

Mr. Burgess motioned to come out of recess.

Seconded by Mr. Osborn.

Vote: Unanimous.

Mr. Carnvale, Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr.

The Board reconvened at 7:19pm

Mr. Thompson noted that the applicant had not finished reading the criteria for the record.

Mr. Medina finished reading the application for the Board.

Mr. Osborn asked how much of the area was to be utilized for the daycare portion. Mr. Medina said that a 12' x 24' area was designated for the use which is just under the allowed area of 290 which would be allowed.

It was noted that Mr. Mazzuchelli arrived at 7:21pm

Mr. Burgess said that the applicant appears to be utilizing 24.88% of his living space for the proposed use.

Mr. Dimmock said that the applicant did not meet the required parking setback of 20' from the lot line. Mr. Medina said that he felt that there was ample parking as they can park 2 cars deep and 10 cars across but if required he could designate the side area near the garage portion which would meet the required setbacks.

Mrs. Medina said that she only has 6 children that she watches and they do not all arrive or leave at the same time.

Mr. Virr said that in viewing the pictures that have been provided by Mr. Mackey there appears to be adequate parking. Mr. Dimmock said that the area shown did not meet the zoning setback of 20' off a public way.

Mr. Virr asked when the home was constructed. Mr. Medina said that the home was built in 1958.

Mr. Burgess asked how close was lot line to the right portion of the home. Mr. Medina said that the shed was approximately 35' from the side and the front of the home was 20' across.

Mr. Burgess asked if there was a wet area near the grassy area. Mr. Medina said yes that there was a small brook to the back and that they do have issues with flooding in their basement.

Mr. Virr said that the home was constructed in 1958 and asked if it was before zoning. He also asked if this home would be considered a legal non-conforming.

Mr. Mackey said that zoning was in effect in the mid 1940's but it was very basic and that the home would be considered legal non-conforming.

Mr. Medina said that he hoped the Board would grant the request that as without the daycare use which is approximately 50% of their household income they would be unable to afford their home.

Favor

No abutters were present.

Mr. Osborn read a letter dated June 16, 2012 from Marjorie Keith, 18 Windham Road, in favor of the applicant for the record.

Opposed

No abutters were present.

Code Enforcement

Mr. Mackey said the applicant is requesting approval to operate a family day care at the residence. According to State regulations she would be allowed a maximum of 6 children plus 3 after school. State regulations require that 40 square feet per interior floor space be provided for each child. If approved, fire and health inspections must be performed and a State license is required. There are pictures in the file for review by the Board.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Carnvale, Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr

Deliberative Session

Mr. Virr said that the applicant clarified the concerns of the Board with regard to the criteria that needed to be met as that with item #4 that they were only utilizing 24.8% and they were requesting a sign in which a permit would need to be obtained from Code Enforcement. He said that there were no employees and that there appeared to be enough room for people to pull in off the road to drop off their children and that there were no covenants found within the deed to prevent the use.

Mr. Osborn said that the applicant would be subject to obtaining all Town and State permits and inspections and obtain a sign permit from Code Enforcement.

Mr. Osborn motioned to come out of deliberative session.

Seconded by Mr. Mr. Dimmock

Vote: Unanimous.

Mr. Carnvale, Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr

Mr. Osborn motioned on case #12-111, Kristen Medina to Grant a Special Exception per Article VI, Section 165-46B of the Derry Zoning Ordinance to allow the operation of a family day care at the residence 10 Windham Road, Parcel ID 25022, Zoned MDR, as presented with the following conditions:

- 1. Subject to obtaining all Town and State permits and inspections.**
- 2. Sign permit required to be obtained from Code Enforcement.**

Seconded by Mr. Dimmock.

Vote:

Mr. Dimmock: Yes.

Mr. Burgess: Yes.

Mr. Osborn: Yes.

Mr. Carnvale: Yes.

Mr. Virr: Yes.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court

Other Business

Mr. Virr said that the Board needed to vote on a summer schedule and that typically the Board only met once during the months of July and August. He suggested that the Board meet on July 19th and August 16th which are the third Thursday's of each month.

Mr. Virr motioned to meet on the following dates for the Boards summer schedule:

**July 19, 2012
August 16, 2012**

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr.

Approval of Minutes

Mr. Dimmock motioned to approve the minutes of May 17, 2012.

Seconded by Mr. Burgess.

Vote: Unanimous

Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr

Mr. Dimmock said that he would like to welcome back Mr. Thompson to the Zoning Board.

Adjourn

Mr. Burgess motioned to adjourn.

Seconded by Mr. Serrecchia.

Vote: Unanimous.

Mr. Thompson, Mr. Carnvale, Mr. Mazzuchelli, Mr. Serrecchia, Mr. Burgess, Mr. Osborn, Mr. Dimmock, Mr. Virr

Adjourn at 7:41 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes on August 16, 2012

Mr. Virr motioned to approve the minutes of June 21, 2012.

Seconded by Mr. Osborn

Vote: 4-0-1

Yes: Mr. Carnvale, Mr. Burgess, Mr. Osborn, Mr. Virr

Abstain: Mr. Dimmock